

Falls Church, Virginia 22041

File: D2007-240

Date:

OCT 10 2007

In re: RICHARD MICHAEL ELINSKI, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF DHS: Rachel A. McCarthy, Bar Counsel

ON BEHALF OF GENERAL COUNSEL: Jennifer J. Barnes, Bar Counsel

ORDER:

PER CURIAM. The respondent will be expelled from practice before the Board, the Immigration Courts, and the Department of Homeland Security (the "DHS").

On January 24, 2003, the respondent was suspended from the practice of law by the Supreme Court of California. On May 19, 2004, the Supreme Court of California accepted the respondent's voluntary resignation. The DHS alleges, and the respondent does not dispute, that the respondent failed to notify it that he had been suspended from practice in California within 30 days of the Court's order, as required by 8 C.F.R. § 292.3(c)(4). Moreover, between February 24, 2003, and August 16, 2007, the respondent submitted numerous applications and petitions associated with "Notice of Entry of Appearance or Representative" forms (Forms G-28) to the DHS or its predecessor agency, checking block 1 and listing his good standing in the California Supreme Court, in order to establish eligibility to appear as an attorney before the agency.

Consequently, on August 22, 2007, the DHS initiated disciplinary proceedings against the respondent and petitioned for the respondent's immediate suspension from practice before the DHS. On August 24, 2007, the Office of General Counsel for the Executive Office for Immigration Review (EOIR) asked that the respondent be similarly suspended from practice before EOIR, including the Board and Immigration Courts. Therefore, on September 14, 2007, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The respondent was required to file a timely answer to the allegations contained in the Notice of Intent to Discipline but has failed to do so. See 8 C.F.R. §§ 1003.105(c)(1); 1292.3(e)(3)(ii). The respondent's failure to file a response within the time period prescribed in the Notice constitutes an admission of the allegations therein, and the respondent is now precluded from requesting a hearing on the matter. 8 C.F.R. § 1292.3(e)(3)(ii).

The Notice recommends that the respondent be expelled from practice before the DHS. The Office of General Counsel of EOIR asks that we extend that discipline to practice before the Board and Immigration Courts as well. As the respondent failed to file a timely answer, the regulations direct us to adopt the recommendation contained in the Notice, unless there are considerations that

compel us to digress from that recommendation. 8 C.F.R. §§ 1003.105(d)(2); 1292.3(e)(3)(ii). Since the recommendation is appropriate in light of the respondent's suspension in California, voluntary resignation from the State Bar of California and the fact that the respondent "has continued to submit Forms G-28 to [U.S. Citizenship and Immigration Services of the DHS] claiming to be eligible to appear as an attorney when he does not meet the definition of attorney" at 8 C.F.R. § 1001.1(f), Notice of Intent to Discipline, at ¶ 10, we will honor it. Accordingly, we hereby expel the respondent from practice before the Board, the Immigration Courts, and the DHS.

As the respondent is currently under our September 14, 2007, order of suspension, we will deem the respondent's expulsion to have commenced on that date. The respondent is instructed to maintain compliance with the directives set forth in our prior order. The respondent is also instructed to notify the Board of any further disciplinary action against him.

The respondent may petition this Board for reinstatement to practice before the Board, Immigration Courts, and DHS under 8 C.F.R. § 1003.107(b).



FOR THE BOARD